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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 JEREMY R. WHITELEY,

16 Plaintiff,

17 vs.

18 USAA CASUALTY INSURANCE
19 COMPANY,

20 Defendant.

Case No. 2:24-cv-00138- FLA-MAA

Assigned to the Honorable Fernando
L. Aenlle-Rocha

**JEREMY R. WHITELEY'S
OBJECTION AND STATEMENT
IN RESPONSE TO USAA'S
ADDITIONAL MATERIAL FACT
NO. 95 IN SUPPORT OF ITS
REPLY**

*[Filed concurrently with Plaintiff's
Sur-Reply; [Proposed] Order]*

Date: March 14, 2025

Time: 1:30 p.m.

Ctrm: 6B

Complaint Filed on January 5, 2024

OBJECTIONS TO USAA’S ADDITIONAL MATERIAL FACT

The parties filed cross-motions for summary judgment. ECF Nos. 45, 52. Defendant USAA Casualty Insurance Company (“USAA”) moved on the following issues: (1) breach of contract/duty to defend, (2) bad faith, (3) declaratory relief, and (4) punitive damages. ECF No. 45. Plaintiff Jeremy Whiteley only moved for partial summary judgment on USAA’s duty to defend. ECF No. 52.

Thereafter, on February 20, 2025, USAA filed its responsive briefing styled as a Reply in Support of its Motion for Summary Judgment and Opposition to Plaintiff Jeremy Whiteley’s Cross-Motion for Summary Judgment (USAA’s “Reply and Opposition”). ECF No. 57. USAA also filed an accompanying Response to Statement of Genuine Disputes of Material Fact and Additional Material Facts in Support of its Motion for Summary Judgment adding a single additional material Fact No. 95 in support of its Reply and Opposition. ECF No. 59.

USAA’s Fact No. 95 states:

Ms. Gonzalez states: As a Property Claims Director I do not have the authority to create, revise, or enact corporate policies or procedures. The decisions that I and my team make during the handling of an insurance claim do not determine or affect

USAA CIC’s company-wide corporate policies and procedures.

See ECF No. 59 at 37.

USAA’s purported “Additional Material Fact” relates to the question of whether Ms. Gonzalez’s decisions and role impacted USAA’s corporate policy thereby qualifying her as USAA’s “managing agent” under California law. This disputed fact is only relevant to USAA’s motion on the issues of bad faith and punitive damages. *See* ECF Nos. 45 at 30-31; 59 at 14-15. USAA was the moving party on the issues of bad faith and punitive damages. Mr. Whiteley did not move on these issues, although he addressed them in his opposition to USAA’s motion. ECF No. 52.

1 Under Local Rule 56 and Fed. R. Civ P. 56 submission of new material facts
2 on Reply is not permitted. Fed. R. Civ. P. 56(e) recognizes that a nonmoving party
3 shall have the opportunity to “properly support or address a fact.” Plaintiff Whiteley
4 did not have an opportunity to dispute or respond Fact No. 95, as he is not permitted
5 to submit a responsive separate statement on Reply regarding issues that were not
6 subject to his moving papers. Had Fact No. 95 been included in USAA’s moving
7 papers, Mr. Whiteley would have disputed it by pointing to Ms. Gonzalez’s
8 testimony concerning her role at USAA. Specifically, Ms. Gonzalez testified she is
9 a property claims director who oversees a team of 90 employees (including nine
10 managers) that cover the entirety of the United States. Crosner Decl. ¶ 2, Ex. A at
11 11:19-13:2. Ms. Gonzalez testified she was the ultimate decision-maker with
12 respect to coverage for all claims in which a USAA insured sought a defense in
13 litigation. Crosner Decl. ¶ 2, Ex. A at 14:2- 15:8. Ms. Gonzalez was involved in the
14 handling of Mr. Whiteley’s claim and was responsible for and approved the final
15 decision to deny coverage. Crosner Decl. ¶ 2, Ex. A at 23:2-14; 136:24-137:8. In
16 other words, Mr. Whiteley would have provided facts to dispute USAA’s assertions
17 that Ms. Gonzalez did not qualify as a “managing agent.” *See White v. Ultramar,*
18 *Inc.*, 21 Cal. 4th 563, 566-67 (1999) (managing agents are “those corporate
19 employees who exercise substantial independent authority and judgment in their
20 corporate decision making so that their decisions ultimately determine corporate
21 policy”).

22 Because USAA failed to comply with the requirements in the local rules and
23 the Federal Rules of Civil Procedure in submitting its additional, purportedly-
24 material fact No. 95, the Court should limit its consideration of USAA’s facts only
25 to those facts that were originally referenced in USAA’s Motion for Summary
26 Judgment. Mr. Whiteley therefore respectfully asks that the Court grant his
27 objection to Fact No. 95 on this basis.

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1 DATED: February 28, 2025

McGuireWoods LLP

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3 By: /s/ Shaun H. Crosner

Shaun H. Crosner

Daria Clecicov

Attorneys for Plaintiff

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